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HEALTH HERO NETWORK, INC.  
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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 ALERE MEDICAL, INC., a California  
Corporation,

14 Plaintiff,

15 v.

16 HEALTH HERO NETWORK, INC., a California  
17 Corporation,

18 Defendant.  
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AND RELATED COUNTERCLAIMS

CASE NO.: C 07-05054 (CRB)

**DECLARATION OF STEFANI E.  
SHANBERG IN SUPPORT OF  
SUPPLEMENTAL BRIEF**

**DECLARATION OF STEFANI E. SHANBERG  
IN SUPPORT OF HEALTH HERO'S SUPPLEMENTAL BRIEF**

I, Stefani E. Shanberg, hereby declare that:

1. I am over the age of 18 and have personal knowledge about the facts described below.

2. I am an attorney at Wilson Sonsini Goodrich & Rosati, counsel for Defendant Health Hero Network, Inc. ("Health Hero"). I submit this declaration in support of Health Hero's Supplemental Brief.

3. Health Hero filed its patent infringement action against Alere on September 6, 2007 in the Northern District of Illinois, Eastern Division, Chicago (the "Illinois action"). Attached as Exhibit 1 is a true and correct copy of the complaint filed by Health Hero in the Illinois action.

4. The Illinois action accuses the Alere DayLink Monitor, Heart Failure Program, NurseStation, Home Monitoring Program, and AlereNet system of infringing Health Hero's U.S. Patent No. 7,223,236 (the "'236 patent") issued on May 29, 2007 entitled "System and Method for Monitoring User-Related Data From a Person."

5. On October 1, 2007, Alere answered and filed counterclaims of non-infringement and invalidity in the Illinois action. Attached as Exhibit 2 is a true and correct copy of Alere's answer to Health Hero's complaint filed in the Illinois action. In its answer, Alere admitted that venue is proper in Illinois. Alere also admitted in its answer and counterclaims that it has customers in the Northern District of Illinois; that it has delivered equipment and/or services to patients in the Northern District of Illinois; and that its customer Humana is located in the Northern District of Illinois.

6. Alere highlights its relationship with Humana on its website, and has also recently exhibited its products at a trade show in Chicago. Attached hereto as Exhibit 3 are true and correct copies of two pages I downloaded and printed from Alere's website on October 15, 2007.

1           7.       Attached hereto as Exhibit 4 is a true and correct copy of a September 27,  
2 2007 slide presentation made by Gordon Norman, M.D., Alere's Executive Vice-  
3 President/Chief Science Officer.

4           8.       On October 1, 2007, Alere filed a complaint seeking a declaratory  
5 judgment of non-infringement and invalidity in this Court (the "California action").  
6 Attached as Exhibit 5 is a true and correct copy of the complaint filed by Alere in this  
7 Court. The California action seeks a declaratory judgment that the same Alere  
8 "DayLink" and related home healthcare monitoring products and services at issue in the  
9 Illinois action do not infringe seven Health Hero patents relating to monitoring of home  
10 healthcare patients—U.S. Patent No. 6,368,273 (the "'273 patent"); U.S. Patent No.  
11 5,601,435 (the "'435 patent"); U.S. Patent No. 5,832,448 (the "'448 patent"); U.S. Patent  
12 No. 6,246,992 (the "'992 patent"); U.S. Patent No. 5,879,163 (the "'163 patent"); U.S.  
13 Patent No. 6,151,586 (the "'586 patent"); and U.S. Patent No. 6,161,095 (the "'095  
14 patent") (collectively, the "California action patents"). All patents-in-suit in both the  
15 Illinois and California actions (except for the '435 patent which nonetheless pertains to  
16 similar technology) have a common inventor—Mr. Stephen Brown.

17           9.       In addition to the Alere suit, Health Hero currently has an action for patent  
18 infringement pending against Patient Care Technologies, Inc., Case No. 1:07-cv-02131,  
19 in the Northern District of Illinois (Chicago) (the "Patient Care action"). The Patient  
20 Care action involves a patent from the same portfolio covering home healthcare  
21 monitoring technology at issue in both the Illinois and California actions pending  
22 between Health Hero and Alere. The patent-in-suit in the Patient Care action is a  
23 continuation-in-part of the '273 patent at issue in this Court.

24           10.      Attached hereto as Exhibit 6 is a true and correct copy of a press release I  
25 downloaded and printed from Alere's website on November 8, 2007.

11. On November 5, 2007, Alere and Health Hero presented to the Illinois court a Joint Initial Status Report for the Illinois action to proceed in Illinois. A true and correct copy of the Joint Initial Status Report is attached hereto as Exhibit 7.

12. On November 13, 2007, Health Hero filed its answer and counterclaims in the California action alleging infringement of five of the California action patents.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on November 14, 2007, at Palo Alto, California.

/s/ Stefani E. Shanberg  
Stefani E. Shanberg